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November 2, 2000

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Magalie Roman Salas  
Secretary  
Federal Communications Commission  
Room CY-B402  
445 12th Street, SW  
Washington, DC 20554

Re: Verizon-New England, CC Docket No. 00-176

Dear Ms Salas:

Enclosed are an original and one copy of the Comments of Fiber Technologies, LLC, in Reply to the Opposition of RCN-BecoCom, LLC, To Grant of Application in the above-captioned matter. I am sending 12 copies, by overnight delivery, to Janice Myles and one copy, also overnighted, to International Transcription Service.

Please contact me if you have any questions.

Very truly yours,

Charles B. Stockdale  
Vice President and Corporate Counsel

Encl.

cc: Janice Myles  
International Transcription Service

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

Application by Verizon New England, Inc., )  
Bell Atlantic Communications, Inc. (d/b/a )  
Verizon Long Distance), NYNEX Long )  
Distance Company (d/b/a Verizon Enterprise )  
Solutions), and Verizon Global Networks, )  
Inc., for Authorization to Provide In-Region, )  
InterLATA Services in Massachusetts )

CC Docket No. 00-176

COMMENTS OF FIBER TECHNOLOGIES, LLC,  
IN REPLY TO THE  
OPPOSITION OF RCN-BECOCOM, LLC,  
TO GRANT OF APPLICATION

Fiber Technologies, LLC  
140 Allens Creek Road  
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By Charles B. Stockdale,  
Vice President and Corporate Counsel

November 2, 2000

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## **SUMMARY**

Fiber Technologies, a competitive fiber provider seeking to do business in Massachusetts, hereby replies to the Opposition of RCN-BeCom, LLC, to Grant of Application (“RCN Opposition”), filed in this matter on October 16, 2000. The RCN Opposition charges Verizon with failing to satisfy Section 271 checklist item “3”, requiring provision of access to poles, conduits, and rights-of-way. It asks, among other things, that this Commission withhold approval of Verizon's application until Verizon fully permits use of qualified non-Verizon contractors to work on poles and allows “boxing” of poles and certain other construction techniques. Fiber Technologies does not disagree that such requests are appropriate. It is concerned, however, that focusing on issues of personnel and construction techniques may wrongfully overshadow the potentially greater obstacle to competition posed by Verizon's drastic failure to adhere to the 45-day deadline for issuance of pole attachment licenses and, where poles are not yet ready for a new attachment, issuance of “make-ready” estimates.

Fiber Technologies respectfully requests that, before the Commission grants any approval of Verizon's instant application, it demand that Verizon demonstrate it has remedied its current deficiencies in processing pole attachment applications in a timely manner.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Application by Verizon New England, Inc.,	)	
Bell Atlantic Communications, Inc. (d/b/a	)	
Verizon Long Distance), NYNEX Long	)	
Distance Company (d/b/a Verizon Enterprise	)	CC Docket No. 00-176
Solutions), and Verizon Global Networks,	)	
Inc., for Authorization to Provide In-Region,	)	
InterLATA Services in Massachusetts	)	

**COMMENTS OF FIBER TECHNOLOGIES, LLC,  
IN REPLY TO THE  
OPPOSITION OF RCN-BECOCOM, LLC,  
TO GRANT OF APPLICATION**

Pursuant to the Public Notice of September 22, 2000, issued in the above-referenced matter, Fiber Technologies, LLC ("Fiber Technologies"), on behalf of itself and its wholly-owned subsidiary Fiber Systems, LLC ("Fiber Systems"), hereby submits comments in reply to the October 16, 2000, Opposition of RCN-BecoCom, LLC, To Grant of Application ("RCN Opposition").

## **I. INTRODUCTION**

Fiber Technologies is a competitive fiber provider that seeks to build fiber networks for lease to competitive local exchange carriers (“CLECs”). The creation of such competitive broadband facilities will significantly boost the public good by providing CLECs with high-speed transport facilities that they will control and which they can customize to match their preferred technologies and to best meet their customers’ needs. Construction of networks by Fiber Technologies and other competitive fiber providers, therefore, will enable CLECs to more effectively compete with incumbent local exchange carriers such as Verizon New England in price, service options, and service quality.

## **II. RCN’S OPPOSITION**

The RCN Opposition focuses on Section 271’s checklist item “3”<sup>1</sup>, urging that the instant application be denied until Verizon has: (1) removed restrictions on the use of non-Verizon contractors to do work on poles; and (2) permitted pole attachers to use

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<sup>1</sup> Section 271 (c)(2)(B)(iii) conditions entry of a Bell Operating Company into interLATA services on the company’s provision of “[n]ondiscriminatory access to poles, ducts, conduits, and rights-of-way ... in accordance with the requirements of section 224”.

various construction techniques, including “boxing” poles, so long as such techniques comply with applicable codes.<sup>2</sup>

### **III. RCN’S OPPOSITION FAILS TO REVEAL FULLY THE NATURE OF VERIZON’S NONCOMPLIANCE WITH CHECKLIST ITEM “3”.**

Fiber Technologies does not disagree that imposing the conditions recommended by RCN would advance the interests of competition in the local telephone market in Massachusetts. In fact, it believes that compliance with checklist item “3” is critical to development of full-fledged competition in the local market, inasmuch as reasonable access to poles, conduits, and rights-of-way is essential to the success of facilities-based providers. Fiber Technologies is concerned, however, that focusing on issues of personnel and construction techniques relative to pole attachments may obscure an equal or greater obstacle to competition posed by Verizon’s pole attachment practices. As set forth below, Verizon is obligated to respond within 45 days to applications for pole attachment licenses. Verizon has blatantly failed to satisfy this obligation in its dealings with Fiber Technologies.

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<sup>2</sup> RCN Opposition at pp. 35-36.

#### **IV. VERIZON FAILS UTTERLY TO SATISFY ITS OBLIGATION TO RESPOND TO POLE ATTACHMENT LICENSE APPLICATIONS WITHIN 45 DAYS.**

Section 271(c)(2)(B)(iii) requires, as a condition to entry into interLATA services, that a Bell operating company such as Verizon comply with the requirements of Section 224 of the Communications Act of 1934. Section 224(b)(1) directs the Commission to adopt regulations governing access to poles and other right-of-way facilities. Section 224(c) permits a state to certify that it will regulate pole attachments.

The Commission's regulations require a pole owner to grant a request for pole access within 45 days unless a reason relating to capacity, safety, reliability, or engineering standards precludes granting such access.<sup>3</sup> Massachusetts's law contains an identical requirement.<sup>4</sup> Verizon testified in the Massachusetts Department of Telecommunications and Energy ("MDTE") section 271 proceeding that, within this 45-day period, it informs a license applicant of any work necessary to make a pole ready to receive the desired attachment ("make-ready work") if a reason relating to capacity or other factor enumerated in such federal and Massachusetts law precludes immediate

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<sup>3</sup> 47 C.F.R. section 1.1403(b).

<sup>4</sup> 220 CMR 45.03(2).



attachment.<sup>5</sup> It also testified that it commits to use its “best efforts” to complete any necessary make-ready work within 180 days.<sup>6</sup>

The attached Statement of Michael Brown, Vice President for Network Operations of Fiber Technologies, demonstrates that Verizon has failed to comply with its obligations, under the law and according to its commitments before the MDTE, to issue pole attachment licenses or make-ready estimates within 45 days of application. As Mr. Brown’s Statement reports, Fiber Technologies, through its wholly-owned subsidiary Fiber Systems, has sought to attach facilities to Verizon poles in the Worcester and Springfield, Massachusetts, markets. It submitted to Verizon its applications for pole licenses in Worcester on June 14, 2000, and in Springfield on June 16, 2000. According to federal and Massachusetts law and Verizon’s statement before the MDTE, therefore, Fiber Systems should have received licenses for poles not requiring make-ready work, and information regarding the make-ready work required for the remaining poles, on July 29, 2000, in Worcester and on July 31, 2000, in Springfield. To date, it has received no such licenses or make-ready estimates with respect to either market. Thus, Verizon currently is 96 and 94 days late, respectively, in responding to Fiber Technologies’ pole applications in Worcester and Springfield.

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<sup>5</sup> *New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts – Section 271 of the Telecommunications Act of 1996 Compliance Filing, MDTE Docket 99-271, Tr. 4124 - 25.*

<sup>6</sup> *Id.*, Tr. 4125.

The time periods noted above; however, do not fully convey the extent of the delay that Verizon is imposing on Fiber Technologies' efforts to build competitive transport facilities in Massachusetts. As Mr. Brown's Statement indicates, the initial step that must be taken to process an application for a pole attachment license is the performance of a "pre-construction survey". During such a survey the poles for which licenses are sought are examined to determine whether they are ready to receive the desired attachment and, if a pole is not ready, what make-ready work is required. The survey is to be undertaken at the start of the 45-day period noted above in order to permit Verizon, within that time period, to complete the survey, digest the information gathered during the survey, and carry out the administrative functions involved in issuing the pole licenses and make-ready estimates. To date, however, Verizon has not even begun the pre-construction surveys for Fiber Technologies in either the Worcester or Springfield market. Thus, if 45 days fairly approximates the time needed to complete the work that should have been accomplished during the 45-day period prescribed by law, Verizon will have delayed the construction of Fiber Technologies' networks in these markets by approximately 141 and 139 days, respectively, if it commences work immediately and performs its duties henceforth in a fully timely manner. Because Verizon has demonstrated little willingness to meet its obligations to Fiber Technologies, however, it appears highly likely that – unless the Commission intercedes as requested below – Fiber

Technologies' planned platform for facilities-based CLECs will be delayed well beyond 140 days.

## **V. RECOMMENDATIONS**

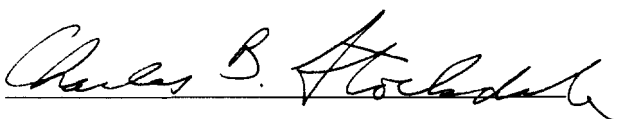
Fiber Technologies respectfully requests that, before the Commission grants any approval of Verizon's instant application, it demand a demonstration that Verizon has remedied its current deficiencies in processing pole attachment applications in a timely manner. In order to cure this deficiency, Verizon should be required to immediately issue pole attachment licenses for which applications were made by Fiber Technologies during June 2000 and for which no make-ready work is required.

In addition, because the lack of response by Verizon, to date, to Fiber Systems' pole attachment applications indicates a disinclination on the part of Verizon to permit the construction of the competitive fiber networks planned by Fiber Technologies, Fiber Technologies asks the Commission to impose a further condition. We ask that the Commission require that Verizon permit the immediate temporary attachment of Fiber Technologies' lines in the Worcester and Springfield markets to any pole for which a license application was submitted in June 2000, where make-ready work is required and where such temporary attachment will create no safety hazard. Temporary attachment is

not uncommon, and requiring it is not unprecedented. Responding to MDTE Record Request No. 7 in this proceeding, Verizon reported that at least five pole attachment applicants recently have been allowed to attach, on a temporary basis, prior to completion of make-ready work. Precedent for requiring temporary attachment as a remedy for delay in licensing is found in the Cable Services Bureau's recent decision in *Cavalier Telephone v. Virginia Electric and Power* (DA 00-1250, *rel.* June 7, 2000). The temporary attachments hereby sought by Fiber Technologies would be made permanent as soon as Verizon has completed the required make-ready work. Under this recommended approach, any further delays in performance of the make-ready work would have no deleterious effect, delaying neither the construction of Fiber Technologies' networks nor the entry of Verizon into interLATA services.

Respectfully submitted,

Fiber Technologies, LLC

By: 

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November 2, 2000

## **APPENDIX A**

## STATEMENT OF MICHAEL BROWN

My name is Michael Brown. I serve as Vice President for Network Operations for Fiber Technologies, LLC. In that capacity, I oversee the construction of outside plant by this company, including the procurement of pole attachment licenses by our subsidiary Fiber Systems, LLC.

On June 14, 2000, Fiber Systems submitted to Verizon applications for attachments to poles in and around Worcester, Massachusetts. On June 16, 2000, Fiber Systems submitted to Verizon applications for attachment to poles in and around Springfield, Massachusetts. These are the only two markets in Massachusetts into which Fiber Technologies currently is seeking entry.

Once a pole attachment license application is received, a pole owner typically conducts a pre-construction survey. Such a survey is called for in the pole attachment agreement between Verizon and Fiber Systems in Massachusetts. This exercise allows a determination of whether the pole is ready, as is, to receive the requested attachment and, if it is ready, the precise location for the attachment. The pre-construction survey also allows identification of poles that are not suitable for immediate attachment. For those poles, the survey permits determination of the work necessary to allow the desired attachment (the "make-ready work"), whether that work is replacement of the pole with a larger one or the rearrangement of existing facilities on the pole. After the physical survey is completed, the pole owner uses the information it has gathered to issue licenses for the poles requiring no make-ready work and to prepare and issue notices, often called "make-ready estimates", describing for the applicant the make-ready work that is required and the estimated cost of the work. Upon receipt of such a make-ready estimate, the applicant decides whether or not to authorize the work and, if the decision is to go forward, submits payment as called for in the estimate. The pre-construction survey should begin immediately after receipt of the license application so that it can be completed and the resulting licenses and make-ready estimates can be prepared and issued within prescribed timeframes.

To date, Fiber Systems has received no licenses from Verizon for any poles in the Worcester or Springfield areas and has received no make-ready estimates from Verizon in either market. To my knowledge, pre-construction surveying has not yet begun in response to the pole attachment license applications submitted to Verizon by Fiber Systems on June 14 and June 16, 2000, for the Worcester and Springfield markets.

The foregoing is submitted under penalty of perjury and is true and correct to the best of my knowledge, information, and belief.

November 2, 2000



Michael Brown